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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Truth-In-Billing and	)	CC Docket No. 98-170
Billing Format	)	

COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

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November 13, 1998

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The American Public Communications Council ("APCC") hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking, CC Docket No. 98-170, released September 17, 1998 ("Notice"), in which the Commission proposes to establish requirements and standards for truth-in-billing and billing format. APCC is a national trade association representing over 3,000 independent providers of pay telephone equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones.

I. TRUTH-IN-BILLING REQUIREMENTS WILL SERVE THE PUBLIC INTEREST

APCC generally supports the Commission's proposals in the Notice to require carriers to clarify the charges that appear on consumers' telephone bills. As the Commission acknowledges in the Notice, carriers have added new charges and surcharges to their customers' bills to purportedly recover costs incurred by carriers in paying new fees and charges under the Telecommunications Act of 1996 ("1996 Act"). Notice at ¶¶ 21,

25. In addition to the universal service and access charge "pass-through" charges referred to in the Notice, carriers are also imposing charges that purport to pass through the cost of compensation paid to payphone service providers ("PSPs") for dial-around calls pursuant to Section 276 of the Communications Act of 1934, as amended. 47 U.S.C. §276. These new charges and surcharges are frequently described by carriers in a vague or misleading manner on consumers' telephone bills. As a result, consumer confusion has proliferated. Additionally, as the Commission observed in the Notice, the charge or surcharge amounts imposed by a carrier on a customer may not in fact correspond to the carrier's actual costs for universal service support and access charges attributable to that particular customer. Notice at 25. Indeed, in many cases, the charges and surcharges exceed the carrier's actual costs.

For these reasons, APCC particularly supports the Commission's proposed billing guideline that would require bills to "contain full and non-misleading descriptions of all charges." Notice at ¶10. Requiring carriers to provide complete, meaningful and non-misleading descriptions of all charges that appear on telephone bills will enable consumers to better understand and react to the information on their telephone bills, thereby allowing them take full advantage of the options available in the competitive telecommunications market. In addition, truth-in-billing requirements will encourage integrity in billing by all carriers.

II. IXCS' MULTIPLE RECOVERY OF PAYPHONE COMPENSATION COSTS IS A PRIMARY EXAMPLE OF THE ABUSES THAT SHOULD BE ADDRESSED BY TRUTH-IN-BILLING RULES

As the Commission is aware, there have been a substantial number of federal regulatory changes since the passage of the Telecommunications Act of 1996 ("1996

Act"). Among the changes were a fundamental overhaul of the Commission's access charge system, implementation of a universal service support system, and payphone reform. While these changes have resulted in new charges for carriers, certain carriers — specifically IXCs — concurrently received a significant reduction in their costs for access to local exchange carrier ("LEC") networks.

As stated above, there has been a great deal of consumer confusion regarding the various new line item charges that carriers have begun to list on customer bills. Consumers are unclear about what these line item charges are actually for, and why it is they are required to pay them. As the Commission notes, these line items charges are frequently identified incorrectly, and their descriptions often suggest that they are mandated by federal law. Notice at ¶25.

In order to determine what requirements and standards should be implemented to achieve truth-in-billing, it is important for the Commission to understand what the carriers' practices are. The Commission cites universal service support and access charge reform as primary examples of 1996 Act-related changes leading to consumer concern and confusion over new line item charges. Notice at 26. However, charges of recovery for universal service support and access are not the only new charges that carriers are claiming to be attributable to the 1996 Act. Carriers are also applying a "payphone access fee" on calling card calls made from payphones[1] and have explained this charge as being necessary to recover the cost of paying dial-around compensation (currently 28.4 cents per call) to PSPs. Almost all major IXCs place a payphone surcharge on callers who originate access code or other operator-assisted calls from payphones and on 800 subscribers who receive such calls. What the IXCs bills do not disclose is that, even before these so-called cost-recovery

[1] *See, e.g.* payphone access fee listed on MCI bill related to a calling card call made from a payphone, attached hereto as Exhibit A.

surcharges were imposed, the IXCs were already recovering amounts well in excess of their actual payphone compensation costs.

As the details of the IXCs' recovery methods described below show, the IXCs' practices for recovering their "costs" for compensation paid to PSPs for dial-around calls are a clear example of IXCs using federally mandated charges imposed on them as an excuse to impose charges far in excess of their actual costs on their customers.

The total amount paid by IXCs to PSPs annually in dial-around compensation is believed to be in the neighborhood of $1 billion. Before the IXCs even introduced their payphone surcharges, they had already implemented rate increases and cost savings that were more than sufficient to recover their annual compensation costs. Specifically, after dial-around compensation initially took effect in late 1996, IXCs such as AT&T, MCI, and Sprint raised their rates for subscriber 800 and some interstate and international services. Calculations performed by Frost & Sullivan, based on AT&T public statements, valued these rate increases, *for AT&T alone*, at $642 million in just 1997.[2] The IXCs explained these rate increases as necessitated by the Commission's mandate in its Payphone Orders[3] that IXCs compensate PSPs for dial-around calls.

The second method by which IXCs' have recovered their dial-around compensation costs is through the reduction in their access charge costs resulting from the Commission's Payphone Orders.[4] The Commission's termination of interstate subsidies for payphone

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2 See, Ex parte filings in CC Docket No. 96-128.

3 Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 20541, 20574 (1996); Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Second Report and Order, 13 FCC Rcd. 1778, 1796 (1996); (the "Payphone Orders").

4 Id.

operations resulted in a payphone-specific reduction in interstate access charges paid by IXCs to LECs of over $250 million. It should be noted that this reduction is distinct from reductions associated with the Commission's Access Charge Reform proceeding.[5] Additional subsidies were terminated at the state level. However — contrary to the pledge they made in the Access Charge Reform proceeding — IXCs do not appear to have passed on to their customers, any portion of these significant intrastate and interstate access charge cost reductions.

The IXCs third method for recovering compensation costs is through savings in PSP commissions as a result of migrating 0+ traffic to access code calls. IXCs pay commissions to PSPs for 0+ calls pursuant to individual contracts. To avoid paying such commission, IXCs have trained their customers over the past several years to dial access code numbers (*e.g.* 1-800-CALL-ATT, 10-10-321, etc.) to reach their preferred carriers, ***even when the payphone is already presubscribed to the same carrier.*** When customers dial-around the payphone's presubscribed carrier, IXCs are able to save the commission payments to the PSP, that would otherwise be paid to the PSP, thereby reducing their overall costs for payphone-originated calls. According to APCC data, in 1993 the average independent payphone service provider originated 51 commissionable 0+ calls; the same data show that by 1997 the average number of commissionable calls had fallen to 16. This 69% reduction in commissionable 0+ calls has drastically lowered IXCs' dial-around compensation costs. The average monthly 35-call reduction at each payphone translates into annual 0+ commission savings for the IXCs of approximately $372 million.[6] Again, the IXCs do not appear to have passed on these savings to their customers.

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5 In the Matter of Access Charge Reform, Order, 12 FCC Rcd. 10,175 (1997).

6 In 1992, the Commission estimated that AT&T's average commission payment on a 0+ call was about 40¢. The $372 million in estimated savings is derived from multiplying

These three cost recovery methods combined account for a conservatively estimated $1.958 billion annually — well in excess of the estimated payments to PSPs. The amount of these payphone surcharges usually equals or exceeds the 28.4¢ per-call default rate established by the Commission.

The recovery methods described above were more than sufficient to enable an IXC to recover its annual dial-around compensation costs. Yet none of this cost recovery has been credited or even disclosed to customers. Instead, the IXCs have added a new, wholly unnecessary, "payphone access fee" priced to recover the *entire* dial-around compensation payment all over again. In billing consumers for this unnecessary and excessive charge, the IXCs have kept silent about their prior recovery of amounts substantially exceeding their costs. By withholding this information from consumers, the IXCs have been able to repeatedly use the Payphone Orders as an excuse for double- or triple-dipping at consumers' expense.

Although the Commission's Payphone Orders[7] gave IXCs permission to recover their costs for payphone compensation, it could not have been the Commission's intention for the IXCs to *over-recover* those costs. As shown above, however, that is precisely what the IXCs have done in general, and in particular, in the case of PSP dial-around compensation. The Notice asks for comment on whether the practice of some carriers that impose on a customer charges that are ascribed to the payment of federally mandated charges but exceed the carriers' costs for these items with respect to that particular customer is misleading or unreasonable under Section 201(b) of the Communications Act

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35 calls per month by 40¢ per call by 12 months of the year by an estimated 2.223 million payphones nationwide.

[7] Id.

of 1934, as amended. 47 C.F.R. §201(b). Notice at 31. Billing a consumer for an amount identified as attributable to a particular cost while charging more than the actual cost incurred is neither just nor reasonable, and clearly violates both the plain language and the spirit of Section 201(b) of the Act.

The Commission should require carriers to explain in a complete, accurate, and meaningful manner not only all separate line items charges that appear on their customers' bills, but also how those rates were derived, so that customers will have the information they need to make informed decisions and do not pay more than their fair share of cost recovery. In addition, when IXCs include a separate line items on their bills for recovery of federally mandated costs — including costs associated with dial-around compensation — they should be required to disclose and explain both the net reduction in their access charge costs since enactment of the 1996 Act and the other ways in which they are recovering their costs. In particular, where IXCs include a payphone surcharge on customer bills the Commission should require IXCs to give an accounting of the dial-around compensation cost recovery they have obtained through the recovery methods described above, and describe to consumers how and why additional cost recovery from them is necessary.

III. IXC BILLING FREQUENTLY RESULTS IN PSPS OVERPAYING FOR UNIVERSAL SERVICE AND PICC CHARGES

In the area of universal service and PICC charges, IXC billing practices can result in PSPs over-paying by incurring duplicative charges as fees.

In the universal service context, IXCs pass through their universal service fund contribution costs to PSPs. However, this pass through does not take into account that (1) PSPs are not considered end users for universal service purposes, and (2) PSPs are already required to pay their own contribution fee into the universal service fund as a PSP. Because PSPs are not considered end users, the IXCs' revenue from PSPs is not "end user" revenue, and IXCs do not use any universal service contribution from their revenue derived from PSPs. Therefore, there is nothing for the IXCs to in fact "recover" from PSPs for universal service support. The Commission has recognized that it is unfair to require PSPs to contribute to the universal service fund twice, and has determined that PSPs need only contribute to the universal service fund as PSPs (and not as end users).[8] IXCs, however, persist in charging PSPs as end users. As a result, many PSPs are charged twice, and many IXCs are over-recovering their universal service contribution costs at the expense of PSPs.

With respect to PICC charges, PSPs share in the confusion experienced by other customers due to, IXCs inadequate explanations of these charges. In addition, however, if IXCs do not follow appropriate billing practices, PSPs can end up paying amounts that are far in excess of the IXC's costs. If a PSP's payphone line is presubscribed to an IXC, the IXC incurs a PICC charge that may be passed on to the PSP. There should only be one PICC charge to the PSP — the charge attributable to the PSP's presubscribed line. However, when the PSP's payphone internally dials an access number to reach a particular carrier, that carrier may also assess PICC pass-through charges on the PSP even though it is not the "presubscribed" IXC. The result is a double charge to the PSP, because it must pay for both presubscribed and non-presubscribed carrier calls.

As stated above, IXCs frequently provide no explanation as to how surcharges for recovery of things such as universal service support, access, and dial-around compensation are derived, and how they relate to the IXCs' actual costs. Thus, the IXCs charge their

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[8] See, FCC Form 457 instructions regarding payment of universal service fund contributions.

customers based upon what they, the IXCs, are required to pay without ever disclosing to these customers what in fact they really do pay.

CONCLUSION

APCC supports the Commission's efforts to clarify and simplify consumer telephone bills. APCC encourages the Commission to implement truth-in-billing requirements designed to provide consumers with complete, meaningful and non-misleading information about their telephone bills.

November 13, 1998

Respectfully submitted,

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EXHIBIT A

Service Summary

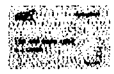
MCI Card Calls	$2.88
	$2.88
Taxes and Surcharges	**$.68**
Current Charges	**$3.56**

MCI/Northwest Airlines Program Members Earn UP TO 5,000 WORLDPERKS MILES when you sign up for MCI Internet® and enjoy unlimited local access for $19.95 per month PLUS 5 MILES PER $1 you spend on MCI services (excluding taxes & credits)! Call 1–800–972–9651. (Local access is not available in all areas.)

MCI Card

MCI Card Calls for

Date	Time	Place	Number	Rate	Min	Amount	
May 29	9:38p	Washington, DC	202 828–4800	24Hr	1	1.44	
	Called from	Charleston, SC	803 722–6240				
May 31	12:52p	Washington, DC	202 828–4800	24Hr	1	1.44	P
	Called from	Charleston, SC	803 722–9245				
Total MCI Card Calls for						$2.88	
Total Card Calls						**$2.88**	



Visiting places around town or around the country this summer.... take your MCI Card with you. Use it to stay in touch with your loved ones and friends. Remember your card number is your home phone number plus a 4 digit PIN you select.

Taxes and Surcharges

Long Distance Service

Federal Excise Tax	$.10
Federal, State & Local Surcharges	$.20
State & Local Surcharges – Out of State	$.08
Payphone Access Fee	$.30
Total Taxes and Surcharges	**$.68**

Invoice Continues on Reverse ...

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 1998, a copy of the foregoing Comments filed by the American Public Communications Council in the above-captioned proceeding were sent by U.S. Mail, first-class, postage-prepaid to each of the following at the addresses indicated:

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